

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BRET WILLIAM ROSS,

Petitioner,

v.

JASON BENNETT,

Respondent.

CASE NO. 3:24-cv-05528-TL

ORDER ON REPORT AND  
RECOMMENDATION AND  
DENYING IFP APPLICATION

This matter comes before the Court on the Report and Recommendation of United States Magistrate Judge Brian A. Tsuchida (Dkt. No. 3) and Petitioner's Objection to Report and Recommendation (Dkt. No. 4). Having reviewed *de novo* the Report and Recommendation, Petitioner's objections, and the remaining record, the Court ADOPTS the Report and Recommendation and OVERRULES the objections.

Petitioner filed a timely objection on July 16, 2024. The first objection is a catch-all, general objection, and the following six objections listed basically challenge the Report and Recommendation for not addressing the merits of the petition for a writ of habeas corpus. Dkt. No. 4 at 1–2. However, the Court cannot consider the petition until the case is properly filed,

1 which includes the payment of a \$5.00 filing fee on an application for a writ of habeas corpus. 28  
2 U.S.C. § 1914(a). Judge Tsuchida determined, based upon Petitioner's prison trust account, that  
3 he can pay the filing fee. Dkt. No. 3 at 1. Petitioner does not address this at all in his objections.  
4 *See generally* Dkt. No. 4. Instead, he seems to take issue with the fact that he is subject to certain  
5 procedural requirements to proceed with his case *in forma pauperis* ("IFP"). *See* Dkt. No. 4 at 2  
6 (objection 8) (claiming that "[t]he Report and Recommendation asserts a Procedural Defense  
7 without any party asserting the defense"). But a litigant's case cannot proceed until a filing fee is  
8 paid if their IFP application is denied. *See Hymas v. U.S. Dep't Interior*, 73 F.4th 763, 765 (9th  
9 Cir. 2023) (noting, in upholding imposition of a partial filing fee, that "if [the party] did not pay  
10 the fee, there was nothing for the district court to do but dismiss the action"). In any event, the  
11 Court agrees that Petitioner can afford to pay the required \$5.00 filing fee.

12 For the foregoing reasons, the Court hereby ORDERS:

13 (1) The Court ADOPTS the Report and Recommendation (Dkt. No. 3) and DENIES

14 Petitioner's IFP application (Dkt. No. 1).

15 (2) Petitioner's objections are OVERRULED.

16 (3) Petitioner shall pay the \$5.00 filing fee within **14 (fourteen) days** of the date of  
17 this Order. The failure to make timely payment will result in dismissal of the  
18 matter.

19 (4) The Clerk shall provide Petitioner a copy of this Order.

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21 Dated this 7th day of August 2024.

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Tana Lin  
United States District Judge